Inland Revenue
Te Tari Taake

TAXABILITY OF PAYMENTS UNDER THE HUMAN RIGHTS ACT 1993 FOR HUMILIATION, LOSS OF DIGNITY, AND INJURY TO FEELINGS

PUBLIC RULING - BR Pub 01/09

Note (not part of ruling): This ruling replaces Public Ruling BR Pub 98/2 published in TIB Volume 10, No 3 (March 1998). This new ruling is essentially the same as the previous ruling. The main changes update relevant case law references and clarify the Commissioner's approach to out of court settlements where he has some doubt about the amount attributed to humiliation, loss of dignity, or injury to feeling. The ruling applies from 1 April 2001 to 31 March 2006.

This is a public ruling made under section 91D of the Tax Administration Act 1994.

Taxation Laws

All legislative references are to the Income Tax Act 1994 unless otherwise stated.

This Ruling applies in respect of sections CD 5, CH 3, and the definition of "monetary remuneration" in section OB 1.

The Arrangement to which this Ruling applies

The Arrangement is:

- The payment of an award of damages to a complainant or aggrieved person by the Complaints Review Tribunal for humiliation, loss of dignity, and injury to feelings under section 88(1)(c) of the Human Rights Act 1993 for breaches of Part 2 of that Act where the complaint involves an employer/employee relationship; or

- The making of a payment to a complainant or aggrieved person for humiliation, loss of dignity, and injury to feelings pursuant to an out of court settlement genuinely based on the complainant's rights to damages under section 88(1)(c) of the Human Rights Act 1993 for breaches of Part 2 of that Act where the complaint involves an employer/employee relationship.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- Payments for damages that are genuinely and entirely awarded for humiliation, loss of dignity, and injury to feelings under section 88(1)(c) of the Human Rights Act 1993 are not "monetary remuneration" in terms of the definition in section OB 1 of the Income Tax Act 1994. Consequently, such payments do not form part of the gross income of the employee under section CH 3.

- Payments for damages that are genuinely and entirely awarded for humiliation, loss of dignity, and injury to feelings under section 88(1)(c) of the Human Rights Act 1993 are not gross income under ordinary concepts under section CD 5.

The period for which this Ruling applies

This Ruling will apply to payments received between 1 April 2001 and 31 March 2006.

This Ruling is signed by me on the 7th day of November 2001.

Martin Smith
General Manager (Adjudication & Rulings)

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COMMENTARY ON PUBLIC RULING BR Pub 01/09

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Ruling BR Pub 01/09 ("the Ruling").

The subject matter covered in the Ruling was previously dealt with in Public Ruling BR Pub 98/2 published in TIB Volume 10, No 3 (March 1998) at page 31. The Ruling applies for the period from 1 April 2001 to 31 March 2006.

Background

Under the Human Rights Act 1993 people can make a complaint to the Human Rights Commission ("the Commission") regarding breaches of that Act. If the Commission is unable to settle the complaint, the matter may proceed to the Complaints Review Tribunal ("the Tribunal").

The Human Rights Act 1993 provides protection for people in areas of public life against discrimination on the grounds of sex, marital status, religious or ethical belief, race, colour, ethnic or national origins, age, disability, political opinion, employment status, family status, and sexual orientation.

The Tribunal is an independent body that hears and determines complaints that have been made to the Human Rights Commission, the Race Relations Office, the Privacy Commissioner, and the Health and Disability Commissioner which have been unable to be resolved. The Tribunal has the power of a court similar to the District Court, and its decisions can be enforced in the District Court if parties fail to comply with its orders or directions.

Legislation

Section 86(1) and (2) of the Human Rights Act provides a number of remedies for the Tribunal when the Tribunal determines that a breach of any of the provisions of Part 2 of the Human Rights Act has been committed:

(1) In any proceedings before the Complaints Review Tribunal brought by the Proceedings Commissioner or the complainant or, as the case may be, the aggrieved person, the plaintiff may seek such of the remedies described in subsection (2) of this section, as he or she thinks fit.

(2) If in any such proceedings the Tribunal is satisfied on the balance of probabilities that the defendant has committed a breach of any of the provisions of Part II of this Act, it may grant one or more of the following remedies:

  (a) A declaration that the defendant has committed a breach of this Act:

  (b) An order restraining the defendant from continuing or repeating the breach, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the breach, or conduct of any similar kind specified in the order:

  (c) Damages in accordance with section 88 of this Act:

(d) An order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the complainant or, as the case may be, the aggrieved person as a result of the breach:

(e) A declaration that any contract entered into or performed in contravention of any of the provisions of Part II of this Act is an illegal contract:

(f) Relief in accordance with the Illegal Contracts Act 1970 in respect of any such contract to which the defendant and the complainant or, as the case may be, the aggrieved person are parties:

(g) Such other relief as the Tribunal thinks fit.

Section 88(1) of the Human Rights Act provides the circumstances in which damages may be awarded under the Act, including damages payments for humiliation, loss of dignity, and injury to feelings:

In any proceedings under sections 83(1) or section 83(4) of this Act, the Tribunal may award damages against the defendant for a breach of any of the provisions of Part II of this Act in respect of any one or more of the following:

(a) Pecuniary loss suffered as a result of, and expenses reasonably incurred by the complainant or, as the case may be, the aggrieved person for the purpose of, the transaction or activity out of which the breach arose:

(b) Loss of any benefit, whether or not of a monetary kind, which the complainant or, as the case may be, the aggrieved person might reasonably have been expected to obtain but for the breach:

(c) Humiliation, loss of dignity, and injury to the feelings of the complainant or, as the case may be, the aggrieved person.

Part 2 of the Human Rights Act sets out what constitutes "unlawful discrimination" under that Act. Section 21 sets out the general prohibited grounds of discrimination, and sections 22 to 74 go on to deal with discrimination in specific situations.

The Ruling considers whether such payments for humiliation, loss of dignity, and injury to the feelings of the employee are "monetary remuneration". Paragraph (a) of the definition of "monetary remuneration" in section OB 1 states:

"Monetary remuneration" …means any salary, wage, allowance, bonus, gratuity, extra salary, compensation for loss of office or employment, emolument (of whatever kind), or other benefit in money, in respect of or in relation to the employment or service of the taxpayer;…

Section CH 3 states that "all monetary remuneration derived by a person is gross income".

Section CD 5 also states that "the gross income of a person includes any amount that is included in gross income under ordinary concepts".

Application of the Legislation

If payments for humiliation, loss of dignity, and injury to feelings, under section 88(1)(c) of the Human Rights Act 1993 were "monetary remuneration", they would be included under section CH 3 as gross income. They would be included in the calculation of "net

income" under section BC 6, and would consequently form part of "taxable income" as calculated under section BC 7.

Section OB 1 defines "monetary remuneration" to include any "…other benefit in money, in respect of or in relation to the employment or service of the taxpayer…". Payments under section 88(1)(c) of the Human Rights Act 1993 are a benefit in money. The issue is, therefore, whether these payments are made "in respect of or in relation to the employment or service of" the recipient.

While many of the categories of discrimination in Part 2 of the Human Rights Act 1993 may relate, directly or indirectly, to an employer/employee relationship, it is clear that many of them are intended to apply to much wider situations. Consequently, in many instances of complaints under the Human Rights Act, payments awarded will be completely outside any employment relationship and will clearly not be "in respect of or in relation to employment". In such cases payments under section 88(1)(c) will not fall within the definition of "monetary remuneration" and will not be included in the gross income of the taxpayer under section CH 3. The Ruling does not consider such situations.

However, it is likely that complaints heard by the Tribunal under the Human Rights Act 1993 often will involve an employee/employer relationship. The question to be answered in the Ruling, therefore, is whether payments under section 88(1)(c) of the Human Rights Act 1993 where the complaint involves an employee/employer relationship are made "in respect of or in relation to the employment or service of the taxpayer".

The meaning of "in respect of or in relation to"

The Court of Appeal has endorsed a very wide meaning of the phrase "in respect of or in relation to". In *Shell New Zealand Limited v CIR* (1994) 16 NZTC 11,303, where lump sum payments had been made by Shell to employees who transferred at the request of Shell, the Court discussed the relevant part of the definition of "monetary remuneration". McKay J, delivering the judgment of the Court, said at page 11,306:

> The words "in respect of or in relation to" are words of the widest import.

Although McKay J acknowledged that the payments in *Shell* were not made under the contract of employment in that case, this did not mean that the employees received the payment outside the employee relationship. The learned Judge had earlier referred to the fact that the payments were not expressly provided under the employees' written employment contracts, but were made pursuant to Shell's employment policy as a matter of discretion. They were still made "because he or she is an employee".

Other cases have also stressed the width of the words "in respect of or in relation to". In the Queens Bench case of *Paterson v Chadwick* [1974] 2 All ER 772, Boreham J considered the meaning of the phrase "in respect of" in relation to discovery, and adopted the comments of Mann CJ in the Australian case *Trustees, Executors & Agency Co Ltd v Reilly* [1941] VLR 110, where the learned Chief Justice said:

The words "in respect of" are difficult of definition but they have the widest possible meaning of any expression intended to convey some connection or relation in between the two subject-matters to which the words refer.

Similarly, in *Nowegijick v The Queen* [1983] CTC 20 at page 25, the Supreme Court of Canada described the phrase "in respect of" as "probably the widest of any expression intended to convey some connection between two related subject-matters".

Recently, other New Zealand cases (*Case U38* (2000) 19 NZTC 9,361 and *CIR v Kerslake* (2001) 20 NZTC 17,158) have considered the phrase "in respect of or in relation to". Both cases are consistent with the authorities cited above in this commentary.

Context may affect the meaning

However, many cases have demonstrated that the meaning to be given to the phrase "in respect of or in relation to" may vary according to the context in which it appears.

In *State Government Insurance Office v Rees* (1979) 144 CLR 549, the High Court of Australia considered the meaning of the phrase "in respect of" in determining whether the debt due to the Government Insurance Office fell within section 292(1)(c) of the Companies Act 1961-1975 (Q.) as "amounts … due in respect of workers' compensation under any law relating to workers' compensation accrued before the relevant date". The Court held that amounts which could be recovered by the Government Insurance Office from an uninsured company pursuant to section 8(5) of the Workers' Compensation Act 1916-1974(Q.) for money paid to workers employed by the uninsured company were **not** amounts due "in respect of" workers' compensation under the Companies Act.

At page 561 Mason J observed that:

... as with other words and expressions, the meaning to be ascribed to "in respect of" depends very much on the context in which it is found.

Stephen J also discussed the meaning of the phrase "in respect of", noting at pages 553-554 that it was capable of describing relationships over a very wide range of proximity, and went on to say:

Were the phrase devoid of significant context, it could, I think, be taken to be descriptive of the relationship between the present indebtedness owed to the State Government Insurance Office and the subject matter of workers' compensation. However a context does exist which is in my view sufficient to confine the operation of s 292(1)(c) to bounds too narrow to be of service to the appellant.

In *TRA Case R34* (1994) 16 NZTC 6,190, certain payments were made to a New Zealand distributor by its overseas parent in relation to repairs which had to be made to cars sold to the New Zealand subsidiary and then sold to dealers. The issue was whether the payments were zero-rated for GST purposes. The definition of "consideration" in section 2 of the Goods and Services Tax Act 1985 was relevant. Part of the definition of "consideration" states:

…any payment made or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods and services …

The TRA stated at page 6,200 that:

A sub-issue is whether the reimbursing payment from the overseas manufacturer (MC) was made "in respect of, in response to, or for the inducement of" the repair work in the sense required by the definition of "consideration" in s 2 of the Act. … Although the definition of consideration creates a very wide potential link between a payment and a particular supply it is, in any case, a matter of degree, commonsense, and commercial reality whether a payment is direct enough to have the necessary nexus with a service, i.e, whether the link is strong enough.

The High Court's decision on the appeal of *Case R34* is *CIR v Suzuki New Zealand Ltd* (2000) 19 NZTC 15,819, which was later upheld by the Court of Appeal. In the High Court McGechan J said:

…it is necessary there be a genuine connection. The legislature is not to be taken as taxing on an unrealistic or tenuous connection basis.

In *Cleland v CIR* (2001) 20 NZTC 17,086, the High Court has also recently considered the matter. At issue was the tax treatment of sums awarded to Mr Cleland by the Employment Court for a personal grievance he brought against his employer. The Employment Court awarded a total amount of $126,000 to Mr Cleland. This comprised $46,000 for loss of wages, $50,000 for loss of benefits, and $30,000 for humiliation.

There was no issue regarding the amount paid for humiliation before Hammond J in the High Court, and accordingly he made no comment on this amount. He concluded that the amount paid for lost wages was therefore assessable as "monetary remuneration". In respect of the further amount of $50,000, Hammond J concluded that it was compensation for loss of office or employment. In order to reach this conclusion Hammond J had to consider whether the amount was "in respect of or in relation to" Mr Cleland's employment or service.

Hammond J referred to the Court of Appeal decision in *Shell* and noted that those words are to be interpreted widely. Counsel for the taxpayer relied heavily on the Full Federal Court decision in *Rowe*. Hammond J stated at paragraphs 46 to 48 of his judgment:

The award is clearly a "rolled up" one by the Employment Court in respect of or in relation to Mr Cleland's past employment.

…
As a sub-part of the argument, it was said for Mr Cleland that, because the award was calculated on future wages and benefits, it was not compensation for (past) loss of office or employment. That is not the test. The test is whether the wages and benefits actually awarded arose out of Mr Cleland's employment. It does not at all follow that, because the award was made relating to a period after the termination of the employment, it was not made in respect of, or in relation to, the employment. As Mr Almao said, "compensation for loss of office or employment by its very nature encompasses future benefits; benefits that an employee might have received had his or her employment continued".

Not all payments to employees are "monetary remuneration"

Not all payments to employees that have a connection with their work are within the definition of "monetary remuneration". In *Fraser v CIR* (1995) 17 NZTC 12,356, at page 12,363, Doogue J in the High Court said:

There is no dispute that the words "emolument (of whatever kind), or other benefit in money, in respect of or in relation to the employment or service of the taxpayer" are words of the widest possible scope: see *Shell New Zealand Ltd v C of IR* (1994) 16 NZTC 11,303 at page 11,306, and *Smith v FC of T* 87 ATC 4883; (1987) 164 CLR 513; (1987) 19 ATR 274. Mr Harley does, however, submit, correctly, that it does not follow that all payments made are necessarily income and refers, for example, to reimbursement payments.

In *FC of T v Rowe* (1995) ATC 4,691 the taxpayer was employed as an engineer for the Livingston Shire Council. As a result of a number of complaints against him he was suspended. An inquiry was commenced, and he incurred legal costs as a result of engaging counsel to defend himself against dismissal during the course of the inquiry. The taxpayer was cleared of any charges of misconduct but was dismissed a year later. The taxpayer claimed his legal costs as a deduction. Although the Council refused to reimburse the taxpayer for his legal costs, the Queensland government subsequently made an ex gratia payment.

The Full Federal Court considered, amongst other things, whether the ex gratia payment constituted assessable income. By majority, the Court concluded that the payment was not assessable under section 25(1) of the Australian Income Tax Assessment Act 1936 as income in accordance with ordinary concepts, nor was it assessable under section 26(e) of that Act as being compensation "in respect of, or for or in relation directly or indirectly to" any employment. Accordingly, Burchett and Drummond JJ (with Beaumont J dissenting) held that the payment was not assessable. Burchett J held that the payment was **not a reward for the taxpayer's services but was a recognition for the wrong done to him**. The payments were not remuneration but a reparation, and they were not sufficiently related to the performance of income-earning activities. On the same reasoning, it was too remote from the employment to be caught by section 26(e). Further, the payment was not assessable under section 26(e) because the employer/employee relationship between the Council and the taxpayer was **merely part of the background facts** against which the ex gratia payment was made. On appeal, the majority of the Full High Court confirmed the Federal Court's decision: *FC of T v Rowe* (1997) ATC 4,317.

In the Australian case of *FCT v Dixon* (1954) 5 AITR 443, the taxpayer received payments from his prior employer topping up his military pay. It would appear from the judgment that the Australian Commissioner argued that even a slight relationship to employment was sufficient to satisfy the test in section 26(e) of the Australian Income Tax Assessment Act 1936 [which made assessable certain sums granted to the taxpayer "in respect of, or for or in relation directly or indirectly to, any employment…".]. This argument was rejected by Dixon CJ and Williams J, who stated at page 446 that:

We are not prepared to give effect to this view of the operation of s.26(e) …There can, of course, be no doubt that the sum of £104 represented an allowance, gratuity or benefit allowed or given to the taxpayer by Macdonald, Hamilton and Company. Our difficulty is in agreeing with the view that it was allowed or given to him in respect of, or in relation directly or indirectly to, any employment of, or services rendered by him …We are not prepared to give s.26(e) a construction which makes it unnecessary that the allowance, gratuity, compensation, benefit, bonus or premium shall in any sense be a recompense or consequence of the continued or contemporaneous existence of the relation of employer and employee or a reward for services rendered given either during the employment or at or in consequence of its termination.

In the same case, at page 450, McTiernan J stated that:

> The words of paragraph (e) are wide, but, I think, not wide enough to prevent an employer from giving money or money's worth to an employee continuing in his service or leaving it, without incurring liability to tax in respect of the gift. The relationship of employer and employee is a matter of contract. The contractual relations are not so total and all embracing that there cannot be personal or social relations between employer and employee. A payment arising from those relations may have no connexion with the donee's employment.

These principles have also been applied by the courts in cases involving contracts for services. In *Scott v FCT* (1969) 10 AITR 367, Windeyer J in the High Court of Australia considered the meaning of the words "in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by him" in section 26(e) of the Income Tax and Social Services Contribution Assessment Act 1936-1961. The case concerned a solicitor who received a gift of £10,000 from a grateful client. Windeyer J stated at page 374 that the meaning of the words of the legislation "must be sought in the nature of the topic concerning which they are used". Windeyer J at page 376 referred to a passage from the judgment of Kitto J in *Squatting Investment Co Ltd v FCT* (1953) 5 AITR 496, at 524, where Kitto J (speaking of certain English cases) said:

> The distinction these decisions have drawn between taxable and non-taxable gifts is the distinction between, on the one hand, gifts made in relation to some activity or occupation of the donee of an income-producing character … and, on the other hand, gifts referable to the attitude of the donor personally to the donee personally.

Adopting this as a general principle, his Honour held that the £10,000 was not given or received as remuneration for services rendered and it did not form part of the taxpayer's assessable income.

A recent case discusses the words "in respect of the employment" in the Australian FBT legislation: *J & G Knowles & Associates Pty Ltd v FC of T* (2000) ATC 4,151. The case concerned interest-free loans to directors of a corporate trustee. Units in the trust fund were held by discretionary family trusts established by the directors. The lower courts were satisfied by a causal relationship, or a discernible and rational link between the loans and each director's employment. However, the Full Federal Court said that there had to be more than just *any* causal relationship between the benefit and the employment: the link had to be *sufficient* or *material*.

The nature and context of the payments

The words "in respect of or in relation to" have been given a very wide meaning to classify most payments made by an employer as monetary remuneration. There must also be a sufficient or material relationship between the payment and the employment. Under the Employment Relations Act 2000 ("ERA") it is true that if an employee were not an employee then there would be no entitlement to receive the payments under section 123(1)(c)(i) of the ERA for humiliation, loss of dignity, and injury to feelings. However, those payments are not compensation for services rendered or for actions that occur in the normal course of the employment relationship. They are based on the existence of a personal grievance.

Under section 88 of the Human Rights Act, damages may be awarded by the Tribunal for a breach of any of the provisions of Part 2 of that Act. As discussed above, breaches of Part 2 will not necessarily be in an employee/employer situation. If a claim is brought in

the Tribunal which does not involve an employee and employer relationship it is clear that payment under section 88(1)(c) cannot be described as monetary remuneration.

Where the complaint brought before the Tribunal does occur in the context of an employee/employer relationship, the connection of the employment relationship with payments under the Human Rights Act is tenuous. The Human Rights Act is not "employment legislation", although it may often operate in the employment context. Payments under section 88(1)(c) of the Human Rights Act for humiliation, loss of dignity, and injury to feelings are **not** compensation for services rendered or for actions that occur in the normal course of the employment relationship. Rather the payments would be in the nature of reparation for a wrong done to the complainant and so would not be in respect of employment.

Payments of damages awards under section 88(1)(c) of the Human Rights Act 1993 differ markedly from the situation in *Shell v CIR*. In that case at page 11,306, McKay J said:

> It is true …that the payment is not made under the contract of employment.…It is nevertheless paid to an employee only because he or she is an employee, **and** is paid to compensate for the loss incurred in having to change the employee's place of residence in order to take up a new position in the company. (Emphasis added)

Thus, in the *Shell* case, the employees received the payments as employees, **and** in order to compensate for the loss sustained as a result of the employment-related relocation.

The Commissioner considers payments under section 88(1)(c) of the Human Rights Act to be too remote from the employment relationship to be within the definition of monetary remuneration. If a complaint is brought in the Tribunal which involves an employee and an employer, the employment relationship in such instances is merely part of the background facts against which the damages payments are made. The payments are not made "in respect of or in relation to the employment or service of the taxpayer".

Income under ordinary concepts

Payments for damages made under section 88(1)(c) of the Human Rights Act are not "gross income under ordinary concepts" under section CD 5.

Although the legislation does not define "gross income under ordinary concepts", a great number of cases have identified the concept by reference to such characteristics as periodicity, recurrence, and regularity, or by its resulting from business activities, the deliberate seeking of profit, or the performance of services (*Scott v C of T* (1935) 35 SR (NSW) 21 and *Reid v CIR* (1985) 7 NZTC 5,176). It is clear that payments under section 88(1)(c) will not generally be made periodically or regularly, or generally recur. Nor as we have seen above, are they compensation for services.

Capital receipts do not form part of "gross income" unless there is a specific legislative provision to the contrary. And by analogy with common law damages, damages payments under section 88(1)(c) of the Human Rights Act are of a capital nature as Barber DJ acknowledged in *Case L92,* where he stated at page 1,536 that:

I appreciate only too well that it is possible to interpret the evidence as showing that the $7,179.30 was formulated as a payment in the nature of common law damages for human hurt and breach and unfairness… I appreciate that the latter concepts are akin more to payments of capital than to wage revenue.

Out of court settlements

The Commission endeavours to settle disputes between parties and sometimes, the parties negotiate a settlement before the dispute is referred to the Tribunal. The settlement agreement may state that the payment is for humiliation, loss of dignity, or injury to feelings. In return for the complainant or aggrieved person surrendering his or her rights under the Human Rights Act, the other party will agree to pay a sum of money. There should be no difference in the tax treatment of the payments dependent on whether or not the parties use the Tribunal. A payment can be for humiliation, loss of dignity, or injury to the feelings of the complainant or aggrieved person whether the Tribunal is involved or not.

Shams

The Ruling will not apply to payments which are akin to sham payments. A sham is a transaction set up to conceal the true intention of the parties and is inherently ineffective. The nature of a sham was discussed by Diplock LJ in *Snook v London and West Riding Investment Ltd* [1967] 1 All ER 518 at 528 where he stated:

I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the "sham", which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create.

Richardson J, in the New Zealand case of *Mills v Dowdall* [1983] NZLR 154, stated that the "essential genuineness of the transaction is challenged" in a sham situation.

It is noteworthy that, in the Taxation Review Authority decision, *Case S 96* (1996) 17 NZTC 7,603, Judge Barber stated at page 7,606:

Of course, seemingly excessive allocations to compensation for feelings injury should be reopened by the IRD.

If the parties to an agreement agree to characterise or describe payments as being for humiliation, loss of dignity, or injury to feelings when they are in reality for lost wages, this transaction would be a sham which would be open to challenge by the Commissioner. Where the Commissioner has some doubt about the amount attributed to humiliation, loss of dignity, or injury to feelings, he may ask the parties to an agreement what steps they took to evaluate objectively what would be a reasonable amount to attribute to humiliation, loss of dignity, or injury to feelings. This would be so regardless of whether the payment was made as a result of an out of court settlement and whether or not the agreement is settled by the Human Rights Commissioner under the Human Rights Act. The onus of proof regarding the taxability of any such payment would be on the taxpayer.